THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.21509 OF 2005

ORDER:

The 1st respondent– A.P. Beverages Corporation Limited, issued a tender notice inviting tenders for disposal of certain machinery lying at 20 IML depots situated at various district locations on *"as is whereas is basis"*. The petitioner-firm was one of the tenderers, who submitted tenders and it is claimed that its offer was the highest. However, the petitioner came to know that while finalizing the tenders, the Corporation did not consider the petitioner's bid. In the circumstances, the petitioner made a representation, in response to which, by letter dated 29.7.2005, the 1st respondent-Corporation informed the petitioner that it had submitted its tender after the time stipulated under the tender notification and, therefore, the same was not entertained. It was also stated that even the valid tenders received by the Corporation were found to be less than the value of the machines and, therefore, the tender itself was cancelled, and the EMDs were returned to all the tenderers as well as the petitioner, who had filed its tender belatedly.

Aggrieved by the said action of the respondent, this Writ Petition is filed disputing the version of the 1st respondent-Corporation, that its tender was received beyond the time stipulated, and contending that the respondent-Corporation ought to have awarded the work in its favour, since the petitioner was the only tenderer, who quoted more than the estimated value.

On behalf of the respondent-Corporation, a counter-affidavit has been filed by the Managing Director, stating that as per the tender notification, sealed tenders along with EMD of Rs.50,000/- were required to be submitted by 2.00 p.m. on 6.1.2005. The validly submitted tenders were to be opened at 3.00 p.m. on 6.1.2005 in the presence of the tenderers. The writ petitioner submitted its tender

belatedly, after the stipulated time i.e., after 2.00 p.m. on 6.1.2005. Hence, the same was not entertained. Even the valid tenderers quoted less than the estimated value of the machines. Hence, the tender itself was cancelled on 10.5.2006 and the EMDs were returned to all the tenderers, including the writ petitioner, who received the same on 16.5.2005. It is further stated that on 6.1.2005, tenders were received up to 2.00 p.m. as per the terms and conditions of the tender notification, and that the tender box was closed at 2.00 p.m. The petitioner came thereafter to submit its tender with a request to accept the same. The said request could not be accepted, in view of the specific time mentioned in the tender notification. It is also stated that the petitioner was informed on the same day and its tender was rejected as it was received after closure of tender box. Subsequently, the tender itself was cancelled, as the offers received were not competent and less than the estimated rates.

I have heard the learned counsel for the petitioner as well as the learned counsel appearing for the 1st respondent-Corporation, and perused the material on record.

The learned counsel for the 1st respondent-Corporation has placed before this Court the original record, which shows that a committee consisting of four senior officials of the Corporation was constituted to evaluate the offers received in pursuance of the tender notice in question. The said committee met on 16.4.2005 and found that out of 8 tenders, seven tenderers submitted their offer in time, whereas one tenderer i.e., the writ petitioner submitted its tender late by 5 minutes. The minutes recorded by the committee also shows that on 4.4.2005 all the tenderers, except the petitioner, who filed its tender belatedly, were called for negotiations by the committee, and were asked to submit revised offers by increasing the rates for the items. Accordingly, five tenderers submitted their revised offers, and on 20.4.2005, all the revised offers were opened and analysed by the committee. Even the petitioner, who submitted his tender belatedly, submitted its revised quotation on 19.4.2005. On 26.4.2005, the tender

committee met again and analysed the rates recommended by the consultants as well as the revised offers received, including the late tenderer. It was found that in respect of five items, higher rates were quoted by four tenderers to the tune of Rs.12,11,696/-. It was also found that the rates quoted by the petitioner, who submitted its tender belatedly, were higher in respect of six items. However, the committee opined that such rates of the late tenderer cannot be accepted and, accordingly, recommended for cancellation of the tender itself. On the basis of the same, the 1st respondent-Corporation took a decision to cancel the tender in respect of all the works and, in pursuance thereof, EMDs were returned to all the tenderers, including the petitioner.

It is not in dispute that under the tender notification, the Managing Director of the 1st respondent-Corporation reserved the right to accept or reject any or all the tenders in part or full, without assigning reasons therefor. In the case on hand, as noted from the original record submitted, the tender committee having analysed the entire tenders opined that it would be appropriate to cancel the tender itself. The recommendation of the tender committee was accepted and the tender was cancelled by the 1st respondent-Corporation. The said action of the 1st respondent-Corporation cannot be said to either arbitrary or illegal.

The law is well-settled that it is always open to the tender inviting authority to cancel the tender, however, the same shall be for valid reasons. In the case on hand, as noted above, the tender was cancelled assigning reasons in the interest of the Corporation. There is absolutely no reason to hold that the action of the 1st respondent-Corporation is vitiated on account of any extraneous considerations, much less arbitrary or in violation of any statutory provisions. That apart, admittedly, the petitioner failed to submit its tender within the time stipulated, and even on that ground, it is not open to the petitioner to make any grievance with regard to cancellation of the tender by the 1st respondent-Corporation.

The writ petition is misconceived, and the same is accordingly dismissed. No costs.

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(G. ROHINI, J.)

July 24, 2006.
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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.21509 OF 2005

July 24, 2006.

Between:

Mount Steel Traders,
D.No.20-7-44/26, Himmatpura,
Hyderabad, represented by proprietor-
Md. Azam. .. Petitioner.

And

Managing Director, A.P. Beverages
Corporation Limited, at Mukaramjahi Road,
Hyderabad and two others. .. Respondents.